

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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HACHETTE BOOK GROUP, INC.,  
HARPERCOLLINS PUBLISHERS LLC,  
JOHN WILEY & SONS, INC., and  
PENGUIN RANDOM HOUSE LLC,

Plaintiffs,

vs. Case No. 1:20-cv-04160-JGK

INTERNET ARCHIVE and DOES 1  
through 5, inclusive,

Defendants.

-----x  
\*HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY\*

REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF  
JEFFREY PRINCE  
Thursday, June 9, 2022

Reported By: Lynne Ledanois, CSR 6811  
Job No. 5255194

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1 different venue. 10:25AM

2 So you have all these patents that  
3 contribute to that standard.

4 Everyone then has some right to get some  
5 payment for those and there has to be an established 10:25AM  
6 rate as to what is a fair rate for the contributing  
7 patents.

8 So in this case, Qualcomm was charging a  
9 certain rate for its patent portfolio for Apple to  
10 use in its smartphones and Apple disputed that rate, 10:25AM  
11 so they were litigating that.

12 Q What was your involvement in that  
13 litigation?

14 A So my role actually focused on the standard  
15 nonessential patents. So Qualcomm's -- what Qualcomm 10:25AM  
16 did was they sold a large portfolio of patents at a  
17 single rate. And that involves standard essential  
18 patents and standard nonessential patents.

19 So my focus was on the latter, where I  
20 perform various analyses to assess value that those 10:25AM  
21 patents provide.

22 Q What were those analyses?

23 A This was a combination of surveys and  
24 econometric analysis depending on the different  
25 technology in play. 10:26AM

1                   So to the extent that I could do                   10:26AM  
2                   econometric analysis using market data, I did that.

3                   In some cases that wasn't feasible, so I  
4                   also utilized surveys to get an assessment of value  
5                   for different improvements.                   10:26AM

6                   Q     Do you use econometric data in preference  
7                   to survey data in assessing questions like the one  
8                   that you addressed in the Qualcomm/Apple case?

9                   MS. STEINMAN: Objection.

10                  THE WITNESS: I'm reluctant to give a           10:27AM  
11                  blanket answer to that. I try to use the method  
12                  that I think is most appropriate given the  
13                  circumstances.

14                  I will say that if I believe market data  
15                  are adequate, I will go that route. But oftentimes   10:27AM  
16                  there are deficiencies and to the extent that those  
17                  are significant enough, I'm -- I have and am  
18                  perfectly willing to utilize surveys as well.

19                  BY MR. GRATZ:

20                  Q     The next case on my list is Apple against   10:27AM  
21                  WI-LAN. We talked about WI-LAN against Apple. This  
22                  is Apple against WI-LAN.

23                  What is the relationship between those two  
24                  cases on your C.V.?

25                  A     So those -- what is the date on that one?   10:28AM

1 report, one of the things I was asked to do that's 11:24AM  
2 relevant here is thinking about if this behavior  
3 were expanded beyond what was currently done, what  
4 would be the implications of that.

5 As I say in the report, I think there's 11:24AM  
6 reason to believe that the harm would be quite a bit  
7 more substantial in that case.

8 BY MR. GRATZ:

9 Q Do you have any opinions about the size of  
10 those harms other than the ones we've now talked 11:25AM  
11 about already?

12 MS. STEINMAN: Objection.

13 THE WITNESS: Nothing specific comes to  
14 mind, although I reserve whatever -- if there's  
15 anything in the report that we have not covered in 11:25AM  
16 this what might fall under this umbrella, it would  
17 still qualify as my opinion and I would update it  
18 with any further information.

19 BY MR. GRATZ:

20 Q Did you engage in any statistical 11:25AM  
21 analysis -- strike that.

22 Did you engage in any econometric analysis  
23 to attempt to identify the size of the harms that  
24 you discuss?

25 A I would say in my critiques of Dr. Reimers's 11:26AM

1 and Dr. Jørgensen's report, the analysis that I did 11:26AM  
2 would be consider econometric.

3 I did not put forth an independent model,  
4 but I did perform an econometric analysis on their  
5 work. 11:26AM

6 Q Why didn't you put forth your own  
7 econometric analysis?

8 MS. STEINMAN: Objection.

9 THE WITNESS: Again, my understanding is  
10 that the burden was on the other side to establish 11:26AM  
11 that there was not harm.

12 So my role was to -- or one of the  
13 things -- one of the pieces of the scope of my  
14 report was to lay out the economic reasoning for the  
15 different types of harm that likely occurred. 11:26AM

16 BY MR. GRATZ:

17 Q In your report when you discuss  
18 Dr. Reimers's and Dr. Jørgensen's analyses, you  
19 identify a number of potential confounding factors  
20 that in your view should have been taken into 11:27AM  
21 account to make their results more accurate; is that  
22 right?

23 A I think that's fair. I would say, you know,  
24 I would say accurate, reliable.

25 To add credibility to the conclusions they 11:27AM

1 mean? 11:43AM

2 A Well, I think I'm contrasting that with  
3 digital licensing where in those cases, they often  
4 come with terms of use by the publisher. So my  
5 understanding is with the purchase of the physical 11:43AM  
6 book, there's not such terms of use.

7 Q Do you know why there aren't such terms of  
8 use with print books that are purchased by  
9 libraries?

10 MS. STEINMAN: Objection, no foundation. 11:43AM

11 THE WITNESS: I don't want to overstate my  
12 legal expertise, but I believe it has to do with the  
13 right of first sale. So in that case they are  
14 buying the book, so then they can use it  
15 accordingly. 11:44AM

16 BY MR. GRATZ:

17 Q From an economic point of view, when a  
18 library buys a print book, is one of the things it's  
19 getting an entitlement to lend that print book out  
20 physically? 11:44AM

21 A I believe that that ability comes with a  
22 purchase.

23 Q And when a library has bought a print book  
24 and lends that book physically to one of its  
25 patrons, that patron is entitled to read it; is that 11:44AM

1 right? 11:44AM

2 A I believe, yes, they can read the book, yes.

3 Q From an economic point of view, when a  
4 library buys a print book, do you have a view as to  
5 whether one of the things it's getting is an 11:45AM  
6 entitlement to lend that print book out digitally?

7 MS. STEINMAN: Objection.

8 THE WITNESS: My understanding is that  
9 they don't have that right to do that.

10 BY MR. GRATZ: 11:45AM

11 Q That's your understanding based on the --  
12 based on copyright law as it's been explained to you  
13 by counsel?

14 MS. STEINMAN: Objection, the witness  
15 is -- any conversations between counsel and Prince, 11:45AM  
16 Professor Prince are privileged. So I direct him  
17 not to answer.

18 MR. GRATZ: Let me ask a better question.

19 Q Do you have any nonprivileged source of  
20 that understanding? 11:45AM

21 A I believe I reviewed some case law on this  
22 in crafting my report that if -- my recollection is  
23 that it established that there isn't the right to use  
24 or to generate a digital copy when advertising a  
25 physical book. 11:46AM

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1 Q What would affect whether that, in fact, 12:45PM  
2 occurred?

3 A I mean, there is a number of elements, I  
4 mean, for one, it would depend upon whether those who  
5 are recording for their own personal consumption would 12:45PM  
6 instead rent or buy if they weren't allowed to do  
7 that. But I don't know the extent to which that's the  
8 case. I haven't done that analysis.

9 Q Would the incentive to make movies be  
10 greater, less or the same in the circumstance where 12:46PM  
11 people could not tape movies shown on TV and watch  
12 them later?

13 MS. STEINMAN: Objection.

14 THE WITNESS: Again, that would depend on  
15 what that rule change would imply in terms of the 12:46PM  
16 return someone would get on their investment in a  
17 movie. To the extent that that return would go up,  
18 that would increase incentives.

19 BY MR. GRATZ:

20 Q The question whether that return would 12:46PM  
21 actually go up is an empirical one?

22 A I mean, you can make theoretical arguments,  
23 but then you could also do an empirical analysis to  
24 assess that.

25 Q In your report, you provide opinions about 12:47PM

1 not teach because I was running the department and an 4:36PM  
2 institute.

3 I will be stepping down from the institute  
4 this summer and then I'll be stepping down as chair  
5 next year. 4:36PM

6 And so my steady state is I would teach  
7 three classes a year, but that's been disrupted  
8 because of my administrative roles.

9 Q Do you spend more time on your expert  
10 witness work and consulting work or on your 4:36PM  
11 teaching?

12 A As I said, now anything I do would be more  
13 than teaching because I'm not teaching right now.  
14 That would not be the case when I'm back to a  
15 three-course load. 4:36PM

16 The other major component of my job is  
17 research, which actually takes up most of my time.

18 Q That was going to be my next question.  
19 About what percentage of your time do you  
20 spend on your consulting work, including expert 4:36PM  
21 witness testimony?

22 A Somewhere in the neighborhood of 20 percent.

23 Q In your work on your expert report, did  
24 you attempt to numerically estimate the size of the  
25 effect you believe Internet Archive's controlled 4:38PM

1 digital lending had on publisher's revenues? 4:38PM

2 MS. STEINMAN: Objection, asked and  
3 answered.

4 THE WITNESS: I did not try to quantify  
5 that, no. 4:38PM

6 BY MR. GRATZ:

7 Q Do you know whether that effect would be  
8 positive or negative?

9 A I laid out the economic reasoning that I  
10 believe points to it being detrimental, having harm. 4:38PM

11 Q But you don't know whether that economic  
12 reasoning, in fact, played out in that way; right?

13 MS. STEINMAN: Objection.

14 THE WITNESS: I don't have the numerical  
15 estimates on that. I think it's -- whatever its 4:39PM  
16 economic reasoning or general theoretical arguments,  
17 to the extent that the premises are sensible and  
18 credible, I believe that the conclusions then  
19 reasonably follow. And I believe those assumptions  
20 were credible. 4:39PM

21 BY MR. GRATZ:

22 Q It is possible that upon examination of  
23 the data through an econometric analysis, it would  
24 turn out that the effect was either zero or positive  
25 with respect to publishers' revenues? 4:39PM

1 MS. STEINMAN: Objection. 4:39PM

2 BY MR. GRATZ:

3 Q Is that right?

4 A It's possibly. I think no one's provided

5 credible evidence to demonstrate that to be the case. 4:39PM

6 Q And you did not attempt to engage in that

7 econometric analysis to make that determination?

8 A Right, understanding that the burden was on

9 the other side to establish there was no harm, I did

10 not engage in that. 4:40PM

11 Q I want to turn to Page 66,

12 Paragraph 107 -- I'm sorry. Page 63, Paragraph 107.

13 A Yes.

14 Q And this is in a section titled

15 "Dr. Jørgensen's comparison of Internet Archive's 4:41PM

16 conduct to OverDrive lending is misleading and

17 irrelevant."

18 Do you see that?

19 A Yes.

20 Q In Paragraph 107, you write that 4:41PM

21 "Moreover, according to Dr. Jørgensen's analysis,

22 there was a huge variability in Internet Archive's

23 relative checkout volume among the book titles,

24 suggesting that some authors might be impacted more

25 heavily than the average provided by Dr. Jørgensen." 4:42PM

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1 (nonzero) sales at least five years after 4:55PM  
2 publication - for USA Today list bestsellers, for  
3 all books published by Plaintiffs, and for the works  
4 in suit - establishes that there were potential  
5 sales that Plaintiff Publishers lost as a result of 4:55PM  
6 Internet Archive's actions."

7 Do you see that?

8 A Yes.

9 Q That's an overstatement, isn't it, in that  
10 I think you've testified you're not expressing the 4:55PM  
11 opinion that lost sales, in fact, occurred but  
12 instead that your arguments from economic theory  
13 lead one to the conclusion that the conditions were  
14 such that one would expect lost sales to have  
15 occurred? 4:56PM

16 MS. STEINMAN: Objection.

17 THE WITNESS: Yes, that's right. But I  
18 don't see how this statement is an overstatement  
19 relative to that framework.

20 BY MR. GRATZ: 4:56PM

21 Q Do you know whether there were potential  
22 sales that plaintiff publishers, in fact, lost as a  
23 result of Internet Archive's actions?

24 MS. STEINMAN: Objection.

25 THE WITNESS: Again, I lay out the 4:56PM

1 economic reasoning. I don't have empirical evidence 4:56PM  
2 of that. But this sentence doesn't claim to have  
3 empirical evidence of that.

4 BY MR. GRATZ:

5 Q It's claiming that something, in fact, 4:56PM  
6 occurred in the world; isn't it?

7 A I don't think so.

8 Q Turning to Paragraph 105, and we may have  
9 an opportunity to discuss this later in connection  
10 with Dr. Jørgensen's rebuttal report. 4:57PM

11 But in Paragraph 105, you discuss  
12 Dr. Jørgensen's estimates of -- related to OverDrive  
13 revenue.

14 Do you see that?

15 A Yes. 4:57PM

16 Q Did you include or exclude audio book  
17 revenues in the analysis set forth in Paragraph 105?

18 A Well, I believe audio books were in here.

19 Q Upon having read Dr. Jørgensen's rebuttal  
20 report and reflecting on the matter, do you think a 4:58PM  
21 better calculation would remove audio books?

22 A I believe that's right. I also believe that  
23 that doesn't have a major impact on the figures.

24 Q Have you done that calculation?

25 A I've discussed it with Analysis Group. I 4:58PM

1 the documents that I requested a moment ago. 5:01PM

2 Q Do you think, considering that -- strike  
3 that.

4 There are a number of potential controls  
5 or rather -- strike that. 5:02PM

6 There are a number of potential  
7 confounding factors that you identified in your  
8 report that you criticized Dr. Reimers and/or  
9 Dr. Jørgensen for not taking into account; is that  
10 right? 5:02PM

11 A Yes.

12 Q Do you have a view as to whether one could  
13 do an analysis that takes all of those confounding  
14 factors into account?

15 A Well, I haven't attempted to do the full 5:02PM  
16 measure that they tried to do. I think, you know,  
17 there's various ways one might approach the problem.

18 One could try to directly account for all  
19 those confounding factors or attempt other ways of  
20 conducting an analysis that would effectively deal 5:03PM  
21 with the presence of those confounding factors.

22 So I haven't gone through that analysis to  
23 determine what might be the optimal path, if one is  
24 possible, but that's the kind of things I would  
25 consider. 5:03PM

1 Q Have you concluded whether or not one is 5:03PM  
2 possible; that is, whether it would be possible to  
3 control for the potential confounding factors that  
4 you identified?

5 A I haven't done that full assessment and what 5:03PM  
6 the -- what's fully possible here.

7 Q For example, one of the potential  
8 confounding factors you identify is awareness of  
9 issues relating to racial justice.

10 Do you recall that? 5:04PM

11 A Yes.

12 Q Do you have any views on how one could  
13 control for that factor?

14 A I haven't fully thought that through, what  
15 would be the optimal way to deal with that. 5:04PM

16 I think what I was doing here is just  
17 highlighting that that clearly was going on and that  
18 one would need to calculate that.

19 Q Is the same true of the other potential  
20 confounding factors that you identified? 5:04PM

21 A Yes, I think that's fair.

22 Q Do you have a view as to whether the  
23 effects of the confounding factors you identify  
24 would go in one direction or the other?

25 MS. STEINMAN: Objection. 5:05PM

1 THE WITNESS: I mean, that's -- I don't 5:05PM  
2 believe I laid all that out in the report. I think  
3 a lot of them would tend to, if ignored, downplay  
4 the effects that they are trying to measure.

5 But I can't say that that's universally 5:05PM  
6 true. I would want to look at that individually.

7 BY MR. GRATZ:

8 Q Do you have a view as to the size of the  
9 effects of the confounding factors you identify?

10 A I don't give a numerical value for that, but 5:05PM  
11 I think with the reasoning that I have laid out,  
12 there's reason to think that their effects could be  
13 non-trivial.

14 Q Turning to Paragraph 80.

15 A Okay. 5:07PM

16 Q In the last sentence you say, "Moreover,  
17 Dr. Jørgensen did not examine the effect of Internet  
18 Archive's conduct on any other plaintiff besides  
19 Hachette."

20 Do you see that? 5:07PM

21 A I do.

22 Q Do you know why Dr. Jørgensen did not  
23 examine the effect on Internet Archive's conduct on  
24 any other plaintiff besides Hachette?

25 A I believe he, in his rebuttal report, may 5:07PM

1 can identify that would address this criticism? 5:28PM

2 MS. STEINMAN: Objection.

3 THE WITNESS: I would have to think about  
4 it. I mean, there are methods that people have  
5 employed to try and assess and account for the size 5:28PM  
6 of the bias.

7 You know, one could try to get relevant  
8 sales data directly so you don't have the  
9 measurement error issue. Those are a couple of  
10 things to think about, but I haven't fully thought 5:28PM  
11 through all the possibilities here.

12 BY MR. GRATZ:

13 Q Turning to Paragraph 93, I want to ask  
14 about the second-to-last sentence here.

15 But let me know when you're ready to 5:29PM  
16 answer questions about that sentence.

17 A Okay.

18 Q It says, "If it were the case that the 127  
19 works in suit were scanned by Internet Archive at a  
20 time when they were experiencing increased demand, 5:29PM  
21 on average, Dr. Reimers percent failed to control  
22 for the possibility that sales would have been even  
23 higher in the absence of Internet Archive's  
24 conduct."

25 Do you see that? 5:29PM

1 I, LYNNE M. LEDANOIS, a Certified  
2 Shorthand Reporter of the State of California, do  
3 hereby certify:

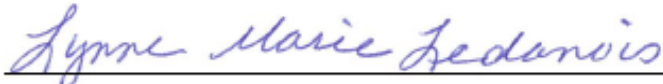
4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that a record of the proceedings was made by me  
7 using machine shorthand which was thereafter  
8 transcribed under my direction; that the foregoing  
9 transcript is a true record of the testimony given.

10 Further, that if the foregoing pertains to  
11 the original transcript of a deposition in a Federal  
12 Case, before completion of the proceedings, review  
13 of the transcript ☐ was ☒ wasn't requested.

14 I further certify I am neither financially  
15 interested in the action nor a relative or employee  
16 of any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date  
18 subscribed my name.

19  
20  
21 Dated: June 13, 2022

22  
23   
24

LYNNE MARIE LEDANOIS

25 CSR No. 6811